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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

DALE W. WAYMAN,

Plaintiff,

v.

FBCS, INC.,

Defendant.

Case No. 2:21-cv-00885

COMPLAINT FOR DAMAGES

**1. VIOLATIONS OF THE FAIR DEBT
COLLECTION PRACTICES ACT, 15 U.S.C. §
1692 *et seq.***

JURY TRIAL DEMANDED

NOW COMES, DALE W. WAYMAN, through counsel, WAJDA LAW GROUP, APC,
complaining of FBCS, INC., as follows:

NATURE OF THE ACTION

1. This action seeks redress for FBCS, INC.’s violations of the Fair Debt Collection
Practices Act (“FDCPA”), 15 U.S.C. § 1692 *et seq.*

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331.

3. Venue in this district is proper under 28 U.S.C. § 1391(b)(2).

PARTIES

4. DALE W. WAYMAN (“Plaintiff”) is a natural person, over 18-years-of-age, who
at all times relevant resided in Las Vegas, Nevada.

16. On or around February 5, 2021, Defendant sent Plaintiff a written correspondence regarding the subject debt ("Defendant's Letter").

17. Defendant's Letter depicted, in pertinent part:

fbcS
consumer contact solutions

Office Hours:
Mon-Fri: 9:00 am through 7:00 pm EST
Sat: 9:00 am through 12:30 pm EST
Toll Free: 1-866-594-8651

Office Address:
330 S. WARMINSTER RD.
SUITE 353
HATBORO, PA 19040

Company Name:	Date:	Current Creditor:	Original Creditor:
FBCS	02/05/2021	Cavalry SPV I, LLC	Capital One, N.A./Orchard
Original Account #:	Current Creditor Account #:	Outstanding Balance:	FBCS File#:
XXXXXXXXXXXX5514	18885314	\$855.83	225716755

Dear DALE W WAYMAN,

Interested in saving \$599.09?

Cavalry SPV I, LLC, has authorized us to accept a reduced amount to resolve your account.

Option 1	Option 2	Option 3
Pay the reduced amount of \$256.74 to us in one payment due 03/31/2021	Pay \$51.35 as a down-payment by 03/31/2021 and the remaining balance of \$205.39 thirty days after your first payment is received.	You may have an opportunity to split your reduced amount into 2 payments of \$128.37 each. Call our office or log on to our website for details.

CALLING FOR FURTHER INFORMATION OR MAKING A PAYMENT IS NOT A SUBSTITUTE FOR DISPUTING THE DEBT.

Sincerely,
Mike Sacco

This is an attempt to collect a debt and any information obtained will be used for that purpose. This communication is from a debt collector.

FBCS, Inc. is not obligated to renew this offer.

The law limits how long you can be sued on a debt. Because of the age of your debt, our client cannot sue you for it, and we will not report it to any credit reporting agencies.

18. Defendant's Letter is a "communication" as defined by 15 U.S.C. § 1692a(2).

19. Defendant's Letter expressly state

20. Defendant's Letter expressly stated "This is an attempt to collect a debt and any information obtained will be used for that purpose. This communication is from a debt collector."

1 21. Defendant's Letter further stated, "CALLING FOR FURTHER INFORMATION
2 OR MAKING A PAYMENT IS NOT A SUBSTITUTE FOR DISPUTING THE DEBT" (the "non-
3 substitute phrase")

4 22. Defendant's Letter created uncertainty and confusion as Plaintiff was unable to
5 determine if he was allowed to call into Defendant to dispute the debt.
6

7 23. As Plaintiff continued to read the letter, there was nothing provided as to what would
8 be an acceptable way to dispute the subject debt.

9 24. Upon information and belief, Defendant specifically designed their letter Collection
10 Letter to be ambiguous, confusing and misleading in order to coerce Plaintiff into calling Defendant
11 so they could have an attempt to collect the subject debt over the phone.
12

13 DAMAGES

14 25. Congress enacted the FDCPA to rein in certain "evils" associated with debt
15 collection," *Bentrud v. Bowman, Heintz, Boscia & Vician, P.C.*, 794 F.3d 871, 874 (7th Cir. 2015),
16 because existing legal remedies were, in its judgment, "inadequate to protect consumers." 15
17 U.S.C. § 1692(b).

18 26. To address those practices, the FDCPA imposes a "rule against trickery." *Belser v.*
19 *Blatt, Hasenmiller, Leibsker & Moore, LLC*, 480 F.3d 470, 473 (7th Cir. 2007); see also *O'Rourke*
20 *v. Palisades Acquisition XVI, LLC*, 635 F.3d 938, 941 (7th Cir. 2011) (noting that the FDCPA's
21 prohibitions "keep consumers from being intimidated or tricked by debt collectors").
22

23 27. The statute thus gives debtors a right to receive accurate information, which they
24 can enforce against debt collectors by bringing suit under the FDCPA. See *Hahn v. Triumph P'ships*
25 *LLC*, 557 F.3d 755, 757 (7th Cir. 2009) ("The [FDCPA] is designed to provide information that
26 helps consumers to choose intelligently").
27
28

28. The value of receiving truthful information about one's financial affairs—and the ill effects of receiving misleading information—may be hard to quantify.

29. But being lied to in violation of an anti-trickery statute like the FDCPA is a concrete harm nevertheless. See *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 373-74, 102 S. Ct. 1114, 71 L. Ed. 2d 214 (1982) (holding that a plaintiff "who has been the object of a misrepresentation made unlawful" by federal statute suffered an injury in fact and thus had Article III standing).

30. Defendant's Letter would not only be highly confusing to the unsophisticated consumer but would also be highly confusing to the most sophisticated consumer.

31. Simply put, Plaintiff was confused and misled which impacted his ability to make an educated decision regarding the subject debt.

CLAIMS FOR RELIEF

Count I – Violations of Sections 1692e and e(10) of the FDCPA

32. All paragraphs of this Complaint are expressly adopted and incorporated herein as though fully set forth herein.

33. Pursuant to §1692e of the FDCPA, a debt collector is prohibited from making "any false, deceptive, or misleading representation" in connection with the collection of a debt. 15 U.S.C. § 1692e.

34. Section 1692e(10) of the FDCPA prohibits a debt collector from using any false representation or deceptive means to collect or attempt to collect any debt. 15 U.S.C. § 1692e(10).

35. Although the word "confusing" does not appear in section 1692e, courts have "interpreted the FDCPA to prohibit confusing presentations." See *O'Boyle v. Real Time Resolutions, Inc.*, 910 F.3d 338, 343 (7th Cir. 2018). Under this standard, a letter might be literally true, but still be misleading or confusing. *Id.* at 344.

36. Defendant's Letter violated 15 U.S.C. §§1692e and e(10) because it is highly confusing and ambiguous with respect to how and what would constitute a valid dispute.

37. Simply put, Defendant's letter conveys Plaintiff's rights regarding the subject debt in a confusing and contradictory manner.

38. In no uncertain terms, the language in Defendant's Letter would confuse the least sophisticated consumer and can result in mass consumer deception and confusion. See *Wade v. Reg'l Credit Ass'n*, 87 F.3d 1098, 1100 (9th Cir. 1996) (Court must judge the language of a dunning letter from the perspective of the "least sophisticated consumer.")

WHEREFORE, Plaintiff, DALE W. WAYMAN, respectfully requests that this Honorable Court enter judgment in his favor as follows:

- a. Declaring that the practices complained of herein are unlawful and violate Sections 1692e and e(10) of the FDCPA;
- b. Awarding Plaintiff statutory and actual damages, in an amount to be determined at trial, for the underlying FDCPA violations;
- c. Awarding the Plaintiff costs and reasonable attorney fees as provided under 15 U.S.C. §1692k; and
- d. Awarding any other relief as the Honorable Court deems just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Fed. R. Civ. P. 38(b), Plaintiff demands a trial by jury.

DATED: May 6, 2021

Respectfully submitted,

DALE W. WAYMAN

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